

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LEWIS JOHN #341735,

Plaintiff,

v.

DEPUTY MARK C. BERRY, DEPUTY  
KRISTAIN NORDSTROM, DEPUTY  
HARDESTY,

Defendants.

CASE NO. C05-5694RJB-KLS

ORDER ADOPTING REPORT  
AND RECOMMENDATION  
AND DISMISSING CASE

The Court, having reviewed defendants' converted motion for summary judgment (Dkt. 24 and 31), the Report and Recommendation of United States Magistrate Judge Karen L. Strombom, objections to the Report and Recommendation (Dkt. 46), and the remaining record, does hereby find and ORDER:


- (1) The Court adopts the comprehensive and well-reasoned Report and Recommendation.
- (2) In his motion to dismiss the summary judgment motion (Dkt. 38) and in his objections to the Report and Recommendation (Dkt. 46), plaintiff contends that he should be afforded the opportunity to conduct discovery before the motion for summary judgment is considered by the court. Fed.R.Civ.P. 56(f) provides as follows:

**When Affidavits are Unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

1 In order to continue a summary judgment motion under Fed.R.Civ.P. 56(f), a party so  
2 requesting must show that he or she diligently pursued previous discovery opportunities,  
3 and must also show how allowing additional discovery would preclude summary judgment.  
4 *Qualls v. Blue Cross of California, Inc.*, 22 F.3d 839, 844 (9th Cir.1994). Plaintiff has  
5 made no showing that or how allowing discovery would preclude summary judgment; he  
6 merely states that he has a legal right to conduct discovery before summary judgment is  
7 granted. Significantly, plaintiff provided no affidavits or declarations *executed by himself*  
8 to contradict the evidence submitted by defendants regarding being hit on the head with the  
9 flashlight and being required to walk to the patrol car with an injured knee; he has not  
10 shown how discovery would have been necessary to allow him to obtain such evidence.  
11 Further, as noted by defendants in their response to plaintiff's objections, plaintiff had nine  
12 months from filing this complaint to conduct discovery; the documents plaintiff apparently  
13 requests would not assist him in meeting his burden under Fed.R.Civ.P. 56 because those  
14 documents at most would reflect on credibility of certain defendants. See Dkt. 47.  
15 Accordingly, the court should not refuse the application for judgment or order a  
16 continuance.

- 17 (3) Defendants' motion for summary judgment (Dkt. 24 and 31) is **GRANTED**.  
18 (4) Plaintiff's complaint and all remaining motions currently pending before the Court hereby  
19 are **DISMISSED**.  
20 (5) The Clerk is directed to send copies of this Order to plaintiff, defendants' counsel and  
21 Magistrate Judge Karen L. Strombom.

22 DATED this 18<sup>th</sup> day of December, 2006.

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25 Robert J. Bryan  
26 United States District Judge  
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